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ABSTRACT

This study deals with the manner in which the nation's telecommunications resources have been managed. The first section, which traces the history of telecommunications management from the mid-1800s through the Lyndon Johnson administration, reveals the way in which telecommunications management has been governed by competing priorities. The second section discusses telecommunications management in the Nixon era; recounts events culminating in Nixon's establishment in 1970 of the Office of Telecommunications Policy (OTP); shows how the controversial activities of the OTP led to charges that it was highly politicized, interfered with functions of the Federal Communications Commission and with public broadcasting, and threatened freedom of the press; and discusses recommendations for telecommunications management made after Nixon's resignation. The final section of the study summarizes assessments of the OTP's performance, indicates problems involved in designing a program for telecommunications management, and describes the reorganization plan submitted in 1977 by President Carter. (GW)

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MANNY LUCOFF

# *Telecommunications Management and Policy: Who Governs?*

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IN 1970, Richard M. Nixon created the Office of Telecommunications Policy (OTP) with a mandate sufficiently broad to cope with both government and industrial uses of telecommunications resources.[1] However, after four years of highly controversial activity and three years of drifting, the OTP's usefulness dramatically declined. Soon after Nixon resigned, a number of telecommunications proposals were made, culminating in the reorganization plan President Jimmy Carter submitted in 1977.[2] Its purpose was to restructure the executive branch's telecommunications management and policymaking functions—the latest in a long series of attempts to find a suitable home for the administration of the nation's telecommunications resources.

The history of telecommunications management is a study of competing priorities. Government agencies and private users of telecommunications resources have resisted centralized control and government regulation. Government concern for the utilization of telecommunications resources traces to the invention of the telegraph in the mid-19th century. Since then, there has been a massive increase in the telecommunications needs of government, industry and the public for purposes of national defense, navigation, space communications, public safety and entertainment, to list just a few.[3]

There is a growing awareness in government of the importance of the structure of the nation's telecommunications operations. Other fundamental struggles are taking place that defy simple resolution. As telecommunications technologies experienced explosive growth, new companies challenged the major common carriers such as AT&T, RCA, ITT and Western Union. As utilization of the electromagnetic spectrum rapidly expanded, competition for telecommunications resources became feverish. More recently, the convergence of computers and communications has given additional impetus to establishing a national telecommunications policy.

This study is chiefly concerned with the manner in which the nation's telecommunications resources have been managed, replete with studies, reports, hearings and investigations designed to upgrade telecommunications management, utilization and policy-making. It is also a story of unheeded advice—massive concern met with massive indecision. Out of it grew two compelling forces: 1) a wide array of government and private telecommuncations investments and 2) a concomitant concern to create and organize an agency to manage these resources. After surveying the history of telecommuncations growth, the major arguments for and against establishing such a centralized governmental agency will be considered.

*History*

When in the mid-1800s telegraph wires first criss-crossed the European continent, it became essential for nations to enter into technical agreements to establish uniform regulations.[4] These agreements formed the basis for the later establishment of the International Telecommunications Union (ITU). With the turn of the century and the invention of wireless telegraphy the need for international cooperation in utilizing telecommunications resources became even more apparent. To a large extent, however, military operations have fostered the most productive environment for rapid development of the spectrum.[5] The Navy played a prominent role in research and development exploiting the spectrum.[6] In 1906 the Berlin Radio Conference was convened to enable the great maritime nations to guarantee wireless communications in times of emergency at sea.

The earliest Federal legislation relating to radio communication, the Wireless Ship Act of 1910, required the installation of wireless equipment on large ocean-going vessels.[7] The Radio Act of 1912 included the first attempts to control interference between ship and shore.[8] The Act had some regulatory and licensing features, but no authority to assign frequencies. It precluded the licensing of Federal government stations, an important precedent which restricted the Secretary of Commerce and Labor to the administration of civilian operations.

Most licensees operated between 300 and 500 kHz with little difficulty until the rise of commercial broadcasting in the 1920s,

whereupon the simultaneous operation of many stations created interference. When the U.S. Attorney General ruled that Secretary of Commerce Herbert C. Hoover had no authority to deny licenses, the Radio Act of 1912 was plainly obsolete.[9]

To prevent similar problems with frequencies assigned to government users, Secretary Hoover proposed organization of Federal departments making extensive use of radio. The Interdepartment Radio Advisory Committee (IRAC) was created in 1922 to find "means for making the most effective use of the wavelengths then being used for government broadcasting." IRAC soon broadened its objectives to include all interdepartment radio matters.[10] Committee members assigned frequencies by agreement among the various users, a procedure that aroused considerable controversy over the years.

Government broadcasting was declared outside the jurisdiction of the FRC in the Federal Radio Act of 1927.[11] Sections 4, 5 and 6 of the act, the basis for Sections 301, 303, 305 and 606 of the Communications Act of 1934,[12] specifically delegated the allocation of government frequencies to the President. In time of war or national emergency, the Act stated that the President may assume control over all radio services.[13] The responsibility for executing these Presidential prerogatives was delegated to IRAC.[14]

As radio communication needs expanded, revisions in the Radio Act of 1927 were sought. In 1933, President Roosevelt requested a re-examination of communications regulation. An interdepartmental study group proposed a single control agency to oversee all radio activities exclusive of government radio stations. In 1934, Congress passed the Communications Act with only minor revisions to the 1927 law. The new legislation expanded the FCC's telecommunications responsibilities by including certain aspects of telephone and telegraph regulation. However, the President asked that IRAC continue its frequency allocations for government users but that "its reports and draft Executive Orders be submitted through the Chairman, FCC."[15]

Research during World War II stimulated new technological developments that put a premium on spectrum allocations.[16] Frequency saturation and problems with coordination of Federal and civilian demands aroused interest in Congress, which ordered an investigation of the FCC in 1942 and several independent

studies to discover an appropriate mechanism for adjudicating industry and government demands.[17] The major points of contention involved jurisdictional questions: 1) who should administer and parcel out spectrum space, 2) who should adjudicate disputes when IRAC and the FCC disagree, 3) how, in a limited spectrum, during wartime, military and non-military communications needs could be reconciled and 4) IRAC's legal authority to make spectrum decisions in the Federal sphere.

Both the FCC and IRAC coveted large sections of spectrum for post-war use. Technical advances required some sort of mechanism to cope with new research and new hardware.

After the war, the supply of spectrum space no longer exceeded demand. The needs of government and industry for communications had quickly outgrown the plans and policies typical of the pre-electronic era, yet a dual system of allocating spectrum to users remained. To cope with problems created by the technological windfall of wartime research and development, the Telecommunications Coordinating Committee (TCC) was created in 1946. Composed of major federal users of the spectrum and the FCC, the committee was authorized to "promote the most effective use of wire and radio facilities" for all users. However, the FCC asserted its statutory responsibilities and assigned TCC a merely advisory role.[18]

The Bureau of the Budget released a 1946 study clarifying the problem:

> 1) The FCC operates as a defender of non-government interests in working with IRAC. If charged with making all frequency assignments it would be subject to much greater political pressure and to accusations of bias from both sides. In turn, its regulation of private radio would be more difficult. 2) It has been proved amply that executive agencies will not allow a co-equal agency to control their internal operations. [As to] a proposal to create a Department of Communications . . . "the regulation of one department by another generally has been quite unsuccessful."[19]

The failure to resolve conflicting demands for spectrum was both a domestic and a foreign problem. Post-war international conferences failed to establish criteria or agreements for frequency allocations. "The demand for frequencies far exceeded the supply and countries, including the United States, could not or would not

reduce their demands."[20] Congressional attempts to enact remedial legislation also failed.

In 1949, the Department of State, at the urging of the FCC, asked President Harry Truman to consider establishing a commission to study the problem.[21] Early in 1950, Truman issued Executive Order 10110 creating the President's Communications Policy Board (PCPB).[22]

In summarizing its position, the board commented:

> **Weaknesses in the present United States telecommunications organizations and lack of high national policy and direction have hindered the United States in the national control of telecommunications and in its international relations on telecommunications. The present telecommunications legislation and organization have failed to produce adequate direction, leadership, administration, and control and have fostered dissension between the Federal Government and industry. Many of these shortcomings could have been mitigated if not avoided.[23]**

The report triggered a variety of organizational changes. President Truman issued Executive Order 10297 in October, 1951, creating a new position, Telecommunications Advisor to the President (TAP) to "assist and advise" him and to direct the activities of IRAC.[24] IRAC's chairman would be designated by TAP, "with the additional responsibility to formulate and recommend policies, plans, and actions in connection with the management and usage of radio frequencies by the U.S. Government." The FCC would withdraw as a regular member of IRAC and the Commission would designate a liaison representative to IRAC to work out mutual problems.[25]

TAP was abolished in 1953 by President Dwight Eisenhower's Executive Order 19460, and these functions were transferred to the director of the Office of Defense Mobilization (ODM) and assumed by an Assistant Director for Telecommunications.[26] The latter was charged with responsibility for all government telecommunications activities and improving the "management and administration of the radio frequency spectrum, and with particular reference to problems created by the divided responsibility of the President and the FCC." IRAC's functions were shifted to the assistant director of ODM.[27]

During the mid-1950s, disputes between the FCC and ODM-IRAC resulted in attempts by Congress to resolve these questions.

Bills were drafted but none was enacted; resolutions were proposed but none was adopted.[28]

When the Office of Civil and Defense Mobilization (OCDM) was created in 1950, telecommunications functions were given a lower priority. "The functions formerly assigned to the Director, ODM by Executive Order 10460 . . . were assigned to the Director, OCDM by Executive Order 19773.[29] The ODM Telecommunications Area was directed to report to the Associate Director for Resources, who reports to the Assistant Director for Resources and Production, who reports to the Director, OCDM."[30]

Telecommunications policymaking entered a new stage in the 1960s. The atmosphere produced by the Cuban crisis called for reassessment of the government's communications capability. Scientific exploration of space, using communications satellites for peaceful and military purposes emphasized the need to develop policies for domestic and international spectrum utilization.

Senator Lyndon Johnson's Space Committee commented:

> With respect to national policy, none has yet been formulated and adopted which clarifies the dual control of the radio frequency spectrum by the FCC and IRAC. . . . No critieria have been established between the conflicting needs of government and non-governmental users. . . . Just as the United States lacks a clear policy for dividing the spectrum among its own users, so it lacks a policy for guidance in preparing the national position for international negotiations.[31]

In 1961, John F. Kennedy inherited the same problems that had plagued his predecessors. After examining recommendations drafted by James Landis,[32] a specialist on independent regulatory agencies, the President issued Executive Order 10995 in February, 1962, establishing the Office of Telecommunications Management (OTM) in the Office of Emergency Preparedness (OEP) in the Executive Office.[33] An assistant director in OEP became Director of Telecommunications Management (DTM).

While similar posts had been advisory to the President, this order delegated to the Director of ODM specific authority to act on telecommunications matters to be redelegated to the DTM. IRAC was also to report to the DTM.

In August, 1962, the Communications Satellite Act was passed, conferring additional Presidential telecommunications responsibilities, most important of which was "to coordinate the activities of governmental agencies with responsibilities in the field of tele-

communications and to help attain coordinated and efficient use of the electro-magnetic spectrum."[34] Kennedy could seek the "advice, assistance, and initiative . . . in coordinating the telecommunications activities of Executive branch agencies and of formulating Government policy"[35] from his new appointee as Director of DTM, Dr. Irwin Stewart, chairman of the 1951 PCPB. However, Kennedy made no formal assignment of his duties at that time and Stewart served only a year, his resignation attributed to being "bypassed on a couple of occasions" and fighting for a meager budget.[36]

When in October, 1960, Cuban-American relations deteriorated and the missile crisis underlined critical weaknesses in the government's communications networks, the National Security Council authorized an Interdepartmental Committee on Communications to examine 'the adequacy of State Department communications to carry the load in a kind of crisis like that. . . ." The system's capacity had been exceeded.[37]

The Committee on Communications recommended a National Communications System (NCS) and, in August, 1963, Kennedy ordered its establishment[38] "to provide necessary communications for the Federal Government" under conditions ranging from normal to "national emergencies and international crises, including nuclear attack, . . . provide the necessary combinations of hardness, mobility, and circuit redundancy" to assure survival of "essential communications in all circumstances."[39]

The memorandum noted that NCS would be the focal point for "a unified governmental communications system."[40] Six years later a government study by the Comptroller General criticized the system's design and planning efforts for "perpetuation and proliferation" of networks to serve individual agency missions. Thus, NCS, said its critics, was basically a federation of executive departments and agency networks.[41] The General Accounting Office (GAO) understandably concluded that responsibilities in telecommunications were so widely distributed throughout government that "the weakness of the present management arrangements preclude prompt solution of problems."[42]

Before resigning as the DTM, Dr. Stewart raised the issue of the military's role in frequency management.

**Should the military assessment of its communication needs and the best way of meeting them be accepted without question? If so, at what level in the Defense Department should the final determination rest? If not, who should have the responsibility for substituting his judgment for that of the military . . . ?"[43]**

It was not until April, 1964, that Lt. General James D. O'Connell, U.S. Army Signal Corps, retired, was appointed by President Johnson as the DTM and SAPT to provide policy guidance and interagency coordination for government use of telecommunications. O'Connell participated in the final discussions in which Defense decided "to abandon the idea of a joint commercial-Government satellite system . . . and . . . the agreement covering the future ownership and direction of the global communications satellite system."[44]

New technologies, particularly satellites and the creation of the Communications Satellite Corporation (Comsat), contributed to a rising chorus of Congressional criticism of telecommunications policymaking. The Military Operations Subcommittee of the House Committee on Government Operations (the Holifield Committee) was the most persistent critic. In its 1964 report on Satellite Communications, the committee identified four major problem areas: 1) more effective spectrum management, 2) more funds for research into new technologies, 3) improve and upgrade NCS and 4) clarify conflicting satellite policies. The committee concluded its report by recommending that the DTM should be removed from the Office of Emergency Preparedness and be reconstituted as a separate unit in the Executive Office of the President."[45] The Senate Commerce Committee commented that "the establishment of an overall telecommunications policy . . . is essential if we are to meet the current and future needs flowing from the technological developments of the space age."[46]

The Holifield Military Operations Subcommittee repeated its recommendations in 1965 by noting that "measurable progress had been made, but a reorganization plan to give higher status to the office, coequal with other constituent units of the Executive Office, has not yet been submitted to the Congress."[47]

The Department of Commerce issued a report in October, 1966, reiterating these concerns. The department's Telecommunications Science Panel advocated Commerce as the seat of the govern-

ment's telecommunications organization with funding to begin at $10 million.[48]

In 1967, the Holifield committee again registered its objections, this time in more specific terms:

> The job of getting some kind of consensus among the contending parties falls to the Director of Telecommunications Management. His role is not the happiest one. The numerous problems to be studied outrun his limited resources in staff and funds. His authority in the Executive Office is anomalous, coming in part from the President and in part from the Director of Emergency Planning. He has the proximity of the President's power and prestige but stands at a distance from the great operating centers, such as the Department of Defense, where important decisions are daily made.[49]

In August, 1967, President Johnson appointed a 17-member task force "to make a comprehensive study of communications policy."[50] The study was published in December, 1968, but was not released until after President Nixon took office in 1969.

The final report, sometimes called the Rostow Report,[51] argued for a "super board" approach and proposed legislation to vest in one executive branch agency responsibility for efficient spectrum use by all government and non-government users.[52] It said "greater flexibility is needed . . . to achieve optimum utilization of this unique and valuable resource," blamed lack of resources in both the civilian and Federal sectors for ineffective regulation,[53] and saw the executive branch's need as long-range planning, policy making, coordination and mission support "to integrate the various roles in which the Executive branch is presently engaged."[54]

A single management, the task force argued, would reduce the number of hearings, allow for more flexible spectrum management, promote more efficient use of expertise and lead to more productive research for government, business and industry.[55] It made no specific recommendations as to where the new office should be located or its size.

In March, 1969, the FCC released a study that blamed the Commission itself for spectrum congestion. The Stanford Research Institute, which contracted the study, said the FCC and user groups on which it relies for help in spectrum management, "simply lack the proper tools to do the necessary management job." The major reason given was that the commission had inadequate resources for assigning spectrum to land mobile operators.[56]

Among critical reviews by law professors of proposals to reorganize telecommunications management,[57] that by Glen O. Robinson has particular relevance because he would later serve as an FCC commissioner.[58]

> The Presidential authority is paramount; his decision is absolute and immune from judicial review. With such powers the White House has become in effect a decision-maker rather than a reviewer. Moreover, the White House has not been reluctant to exercise its authority, and from a number of notable instances it is evident that the White House decisions, which need not be explained or justified, are often made on grounds unrelated to foreign policy or other "national interest" considerations which provided the basis for granting this power to the President. Perhaps the most significant [point] is that there is no effective restraint on the exercise of the White House authority. No matter how demonstrably wrong the decision—indeed, no matter how palpable an abuse of authority—there is no review and in most cases not even public scrutiny.[59]

Robinson concluded that reorganization has limits. Undue attention to institutional reform "becomes simply evasive insofar as it ignores the inevitable necessity to confront and resolve difficult policy issues" and make hard choices.[60] He proposed strengthening the existing office with budget and staff.

Soon after the Rostow Report was released President Nixon installed in the White House a new policy and planning office, the Office of Telecommunications Policy (OTP), a stronger, more independent executive branch agency, to succeed OTM. With the transition came a remarkable series of events. The dramatic change of direction, introduced by Clay Thomas Whitehead, becomes most apparent when the OTP's plans and policies are contrasted with those of its predecessors. The startling nature of the OTP's performance is important to study for several reasons. First, it provides a test for determining the efficacy of placing a unified telecommunications agency at the seat of the power: the White House. Second, it demonstrates what happens when a key agency is politicized and threatens freedom of the press. Finally, an investigation of OTP's activities offers an opportunity to determine whether an executive branch agency with a dual role in governmental and non-governmental areas can provide the long sought leadership in telecommunications policy and management.

*The Nixon Era*

When Richard Nixon made his second try for the presidency in 1968 he sought out the expertise of Clay T. Whitehead, a RAND Corporation researcher, to assist in the campaign by preparing material on how the presidential budget could be used as an instrument of national policy. Whitehead, with a Ph.D. from Massachusetts Institute of Technology, studied "policy analysis, economics, and research and development management," taught political science at MIT and was a consultant to the Bureau of the Budget. After Nixon won the election, Whitehead was asked to join the administration as a special assistant to the President reporting to Peter Flanigan.[61]

Upon assuming the presidency, Nixon came under steadily increasing media criticism. To counteract press opposition, several strategies were devised by the executive branch. James Keogh, chief of the White House research and writing staff, aptly described one technique as "over their heads and to the people." According to Keogh, "Richard Nixon believed—and more than once advised his associates—that the best way to communicate with the people was to appear on live television and speak directly to them. This was, in effect, going over the heads of the newsmen so that what was said would not be strained through their political bias."[62]

Keogh cites H. R. Haldeman's claim that the press "magnified" Nixon's problems and "had a 'vested interest in his unsuccess.' "[63] During the early years of the first Nixon administration, Herb Klein, director of communications for the executive branch, implemented a procedure that bypassed national media organizations centered in Washington. Keogh described it as a "clearly visible end run around the national news corps [with] a series of regional briefings for news executives from both the press and television, set up in a number of cities by Herb Klein. The series featured personal reports to the editors by key administrative figures." The strategy was based on the belief that the national press corps was "so biased that the administration would not get a fair break through them."[64]

As the Nixon administration became more deeply embroiled in controversy, the White House moved ahead with its plans to

establish new procedures for managing the nation's telecommunications. In December, 1969, Whitehead prepared a policy paper entitled "Executive Branch Organization for Telecommunications"[65] issued jointly with Flanigan. The report became the basis for the reorganization plan to establish the OTP.

After reviewing past executive failures in telecommunications planning, Whitehead made several recommendations for dealing with both civilian and Federal telecommunications operations. The report called for the creation of an OTP in the Executive Office of the President. Its responsibilities would include:

**—economic, technical, and systems analysis of telecommunications policies and opportunities in support of national policy formulation and U. S. participation in international telecommunications activities.**

**—developing executive branch policy on telecommunications matters including but not limited to, industry organization and practices, regulatory policies, and the allocation and use of the electromagnetic spectrum for both Government and non-Government use.**[66]

Apparently, some of these industry organization and practices and regulatory policies were "such issues as foreign attachments to the public telephone network, cable TV and pay TV, and the possible uses and industry structure for a domestic satellite communications system."[67] These recommendations represented a new direction. They had no precedent in previous mandates to executive branch agencies, which heretofore exercised no policy role in non-governmental telecommunications functions. From the start, the OTP's creator and director-to-be designed an agency to have a persuasive impact on civilian aspects of the nation's telecommunications system.

Other recommendations included "advocating executive branch policies to the FCC, and through the President to the Congress; and representing the executive branch in FCC proceedings" and "exercising final authority for the assignment of the spectrum to Government users, and developing with the FCC a long-range plan for improved management of the total radio spectrum."[68]

The report concluded with the author's views on the qualifications of the Director:

**1) A thorough grasp of the social, economic, engineering and national security factors which must be considered in formulating telecommunications policies and standards.**

**2) Familiarity with telecommunications needs and opportunities of government, industry, and the public, and with the structure of private and governmental telecommunications institutions, both national and international.**

**3) The ability to initiate and coordinate telecommunications policy matters on an interdepartmental basis in cooperation with industry and public interest groups, and to define and analyze those key issues requiring Presidential involvement.[69]**

In effect, Whitehead had prepared the job description for which he would soon be nominated.

One month later, in January, 1970, Whitehead produced another key document, although it was signed by Flanigan. In a memorandum to newly-appointed FCC Chairman Dean Burch, Whitehead outlined and suggested a reevaluation of the commission's previously-expressed staff position on domestic satellite services. The White House memorandum proposed an "open-skies" policy, which, in effect, would remove Comsat as the single supplier of services in a pilot domestic satellite system. In its place, Whitehead proposed that "any financially qualified public or private entity, including Government corporations, should be permitted to establish and operate domestic satellite facilities for its own needs; join with related entities in common user, cooperative facilities; establish facilities for lease to prospective users; or establish facilities to be used in providing specialized carrier services on a competitive basis."[70]

The commission earlier had decided to delay action on domestic satellite policy when, in July, 1969, the White House issued a public statement asserting that "the administration has a large stake in the system that is established."[71] The commission's acceptance of the delay, coupled with Whitehead's proposal for open entry shortly thereafter, resulted in a new FCC position on entry into the domestic satellite field. On March 24, 1970, the commission issued its First Report and Order seeking to determine from interested parties whether there should be facilities for multiple or specialized common carrier services, joint cooperative use or any combination of such services.[72]

While the commission previously had not taken a firm position, the questions of ownership and operational responsibility had been under review for almost a decade. A unanimous FCC fought for competitive private ownership of the nation's portion of the

international communications satellite system prior to the establishment of Comsat in 1962. However, with respect to a domestic satellite service, "in early 1969 the FCC was prepared to authorize a [Comsat-directed] pilot program. A report and order had been drafted, and tentative expressions of the position of each commissioner had been made. Before issuing it, however, then-Chairman [Rosel] Hyde took the document to the White House to inform the White House staff of the action the commission was to take." These events prompted the White House request to delay final consideration of the issue pending further study by President Nixon's staff.[73]

Several applications were filed in 1971. Whitehead wrote Burch in October that "no further study, sifting of applications, or enforced commercial arrangements would be as constructive for the using public or for the industry as the prompt opening up of this new and exciting field." He urged the commission to "adopt an open-entry policy as promptly as possible."[74] Enclosed with the letter were several recommendations, one of which argued that allowing commercial satellites to support public television is "an inefficient, inequitable, and largely counterproductive approach" in providing the American people with "a dividend from U. S. investments in space technology."[75]

The commission issued its Second Report and Order in June, 1972, with only minor changes in the open-entry plan,[76] agreeing with the earlier White House view that there were "no public interest grounds for establishing a monopoly in domestic satellite communications."[77]

Thus Whitehead, with the support of the White House, had turned the commission around. The open-entry system was to encourage greater diversity through competition, a rationale that became the basis for resolving virtually every telecommunications decision that Whitehead and the OTP took. Commissioner Johnson's concurring opinion did not miss that point: "The ability of the Commission to move in variance with White House positions on important policy questions (regardless of who is President) is very questionable."[78] The outcome forecast a strong White House impact on other communications matters.

In February, 1970, President Nixon transmitted Reorganization Plan No. 1 to Congress with an accompanying letter explaining the

necessity for dealing "with the issues which arise from telecommunications growth. As the largest single user of the nation's telecommunications facilities, the Federal government must also manage its internal communications operations in the most effective manner possible."[79]

The OTP's mission differed in several ways from that of any predecessor agency. It was to:

> 1) serve as the President's principal adviser on telecommunications policy, helping to formulate government policies concerning a wide range of domestic and international telecommunications issues and helping to develop plans and programs which take full advantage of the nation's technological capabilities.
>
> 2) formulate policies and coordinate operations for the Federal government's own vast communications system, . . . and
>
> 3) enable the executive branch to speak with a clearer voice and to act as a more effective partner in discussions of communications policy with both the Congress and the Federal Communications Commission. This action would take away none of the prerogatives or functions assigned to the Federal Communications Commission by the Congress.[80]

In addition, another new agency, the Office of Telecommunications (OT) would be created and located in the Department of Commerce to assist the OTP in research and analysis. The logic behind two offices was to take advantage of the existing technical capability in the department, but to separate operations from policy functions. OT's dual responsibility proved to be a major structural defect in the executive branch's telecommunications plans.

Despite the Presidential disclaimer, the FCC quickly discovered a number of issues on which it and the OTP were to tangle. The language in the President's letter appeared sufficiently broad to enable the OTP to determine its own mandate.[81]

The plan was referred to the House Committee on Government Operations and was reported out favorably. However, no vote was taken on it by either House or Senate. So, by law, it automatically went into effect April 20, 1970.

An FCC attorney took strong exception to the reorganization plan. Edwin Spievack, legal assistant to then-Commissioner H. Rex Lee, charged that the expanded role of OTP in the private sector represented "a radical departure from Presidential authority [as] defined in the Communications Act," which "assigned the com-

mission complete responsibility for the formulation of national policies in the non-government use of such communications" citing 47 U. S. C. Paras. 151, 301 and 303. "By contrast," he argued, "the President has no similar authority, either to formulate national policy respecting non-government communications, or to speak as an 'effective' partner in that enterprise." To him the reorganization plan looked like "usurpation of legislative powers already delegated to the independent regulatory sphere." Spievack said the order "threatens improper political encroachment upon the independence of regulatory responsibilities" on the part of the President.[82]

To no one's surprise, Presidential assistant Clay T. Whitehead was nominated by Mr. Nixon on June 26, 1970, to head the OTP. The hearing before Senator John O. Pastore's communications subcommittee was routine. Pastore applauded the President's choice, citing Whitehead as one of the most brilliant young men ever to enter government service. The senator reminded the nominee that one of the OTP's priorities should be the development of an overall national telecommunications policy. He indicated that he hoped Whitehead would succeed where his predecessors, Dr. Irwin Stewart and Gen. J. D. O'Connell, had failed. Whitehead replied that the complexities of telecommunications operations inhibited the development of a national policy, but he would strive to conceive a workable "policy process that can respond to changes in the economy, industry and society."[83]

The Senate confirmed the nomination and, on September 4, 1970, President Nixon issued Executive Order 11556 prescribing OTP's duties and functions.[84] Whitehead took office September 22, 1970, with the President participating in the swearing-in ceremony.

The operational thrust that Whitehead brought to his new post differed substantially from that of his predecessors. He quickly became occupied with CATV, public and commercial broadcasting. In December, 1970, he criticized the FCC's Fairness Doctrine, attacked government interference in "content-related aspects of communication policy," but allowed that government has an "affirmative obligation to see that conditions are conducive to the free and open exchange of ideas."[85] Not that the OTP ignored the government's investment in telecommunications op-

erations. However, Whitehead's public statements on cable, license renewals, the Fairness Doctrine, network news and reruns, de-regulation of radio, public TV programming, VHF drop-ins, industry copyright proposals and the role and function of the FCC tended to promote the OTP as a mini-FCC and Whitehead as a White House surrogate on issues traditionally of no concern to the executive branch. A strategy of speaking to industry groups throughout the country produced a highly visible profile for himself and the young agency.

During its most activist period, the OTP broke an apparent deadlock among cable operators, broadcasters and copyright owners and forced an agreement that provides insight into the OTP's ability to influence the regulation of private telecommunications.

Early in 1970, after years of examining CATV issues, the FCC made known its views on how cable operators would be permitted to enter the nation's largest markets. OTP also expressed interest.[86] Many broadcasters viewed unregulated cable expansion as a direct threat to their existence. Cable TV would fragment existing markets with multiple sources of programs and import distant signals from other markets. Cable operators would pay no copyright fees for the use of signals they then sold to subscribers.

When the FCC held hearings on proposed rulemaking during the spring of 1971,[87] an agreement acceptable to all parties seemed highly unlikely. Broadcasters feared the favorable attitude toward the growth of cable by Chairman Burch, who, in previous Congressional testimony, had indicated a desire to lift the "freeze" on CATV's entry into major markets. However, because of the complexity of the FCC's draft rules, the commission was instructed by Congress to seek its guidance before taking final action.

OTP's expanding interest in CATV paralleled that of the FCC. In May, 1971, Whitehead testified to a House appropriations subcommittee that despite the broad range of other problems confronting OTP, "[I] regard CATV as most important because cable television 'ultimately gets into the question of how we distribute information.' "[88]

Broadcast industry lobbyists also got busy. A few days after the FCC announced liberalized CATV rules, Senator Pastore reported that he had received letters from some 30 members of Congress "expressing the view that Congress should have a hand in shaping

CATV policy."[89] Network executives had a series of meetings with President Nixon, NBC officials on June 8 and the NAB's Board of Directors on June 23. On June 28 the President appointed a long-rumored Cabinet-level committee to study cable policy with Whitehead as its chairman.[90]

None of this feverish activity was likely to dispel the widespread belief that the FCC and OTP were on a collision course. On July 23, prior to the release of the Commission's proposals, *Broadcasting* reported an ominous development.

> There's no doubt that White House intends to take central role in formulation of cable-regulation policy. Not only was that point made clear by Clay T. Whitehead to broadcasters, cable representatives and copyright owners at meeting he called Friday. But FCC Chairman Dean Burch was summoned to more than one unannounced session at executive offices last week. Mr. Burch reportedly had audiences with Mr. Whitehead, Herb Klein, President's director of communications, and Charles Coulson [sic], special counsel to President.[91]

*Broadcasting* reported FCC's opposition as based on "the feeling that more expert knowledge on CATV has been accumulated within the walls of the FCC than anywhere else," and that it "does not need help from Mr. Whitehead."[92]

On August 5, Congress received the FCC's CATV draft proposals, a "letter of intent" described as a blueprint for an urban invasion. When Congress returned from the August recess, broadcasters beat a path to Washington to overturn the new plans while cablecasters, particularly the National Cable Television Association (NCTA), developed their own battle plan. But Chairman Burch was unable to resolve the differences and the OTP stepped in to mediate the dispute in late October, 1971. NCTA counsel said it was called to a meeting by White House aide Peter Flanigan and told to come up with an agreement, one which had to come closer to what the broadcasters wanted. The association was forced to accede to Whitehead's proposals and the OTP-inspired Consensus Agreement came to pass as part of the FCC's February, 1972, Third Report and Order.[93]

The cable people were not alone in their dissatisfaction with the agreement. In a symposium on cables and satellites, a CBS attorney, Harry Olsson, commented: "Some of us think that people in the administration have their own reasons to break the power of

the broadcast establishment and that one way of doing this is by making cable grow."[94] Robert Sarnoff, addressing NBC affiliates at their 1973 annual meeting, remarked: "The OTP seeks to force-feed cablevision beyond its natural growth to offset broadcasting."[95]

The severest critic, however, was Commissioner Johnson:

> In future years, when students of law or government wish to study the decision-making process at its worst, when they look for examples of industry domination of government, when they look for Presidential interference in the operation of an agency responsible to Congress, they will look to the FCC handling of the never-ending saga of cable television as a classic case study. It is unfortunate, if not fatal, that the decision must be described in these terms, for of the national communications policy questions before us, none is more important to the country's future than cable television.[96]

Johnson aimed directly at Whitehead:

> His participation, indeed the very existence of his Office, looms large as a threat to the independence of the FCC as an agency responsible only to Congress. This alternative voice tends to turn the Commission into a partisan body, by causing it to react on political rather than sound policy grounds; further, it tends to increase the rivalry between the President and Congress, a rivalry which is healthy only when it results in constructive dialogue as opposed to destructive bickering. And, no less serious, it legitimized the Administration's carrot/stick approach to broadcasters, serving as its does as an ambiguous fear-inducing outlet for the President's attacks and rewards to the media.[97]

Criticism was heard also in other government circles. *Broadcasting* quoted Lionel Van Deerlin (D.-Cal.), a House communications subcommittee member, as labelling Whitehead "the architect of a 'new empire' [in broadcast regulation]. . . . The OTP has 'strayed into political thickets' " and Whitehead's recommendations " 'appear to drive a wedge between the networks and their affiliates.' . . . Van Deerlin suggested that OTP stick more to technological and engineering problems rather than make the FCC 'an adjunct in policy making.' "[98]

In dealing with the broadcast industry, OTP's main weapon was the power and prestige of the White House. Under Whitehead, the young agency had not yet inspired respect based on expertise. His influence was growing, however, and when OTP became involved with public broadcasting, Whitehead drew upon the full weight of his office.

The seeds of government interference in public television were sown years earlier when the 1967 Public Broadcasting Act failed to provide for insulation of federally appropriated funds. In October, 1971, Whitehead capitalized on this weakness by blasting the Public Broadcasting Service (PBS) for its centralized network structure.[99] The Nixon administration complained that PBS broadcast "more documentaries in prime time than the three commercial networks combined."[100]

The White House had little interest in supporting the long-range financing sought by public broadcasters, evidently believing that such legislation would only fuel network programming antithetical to its own views. So, when Congress endorsed a two-year $165 million authorization, President Nixon vetoed it (in June, 1972). Nixon had expanded the war on the media and set off an exhausting struggle for survival by public broadcasters.[101]

The veto caused a drastic reduction in programming and hours of service, and led to a shakeup in the chairmanship and top staff positions at the Corporation for Public Broadcasting (CPB). When replacements were made on the CPB board, the positions were filled by people sympathetic to the administration and the new CPB leadership quickly moved to pre-empt PBS' program authority, thereby relegating the network "purely to a technical distribution role."[102]

By taking over program decision-making from PBS, CPB, as a lay board appointed by the President, assumed the responsibility for all network programming. Whitehead called it a necessary step in returning control to local stations. The strategy neatly fit the larger pattern already established by the White House in its appeals for grassroots media support. CPB maintained that a strong, centralized national network did not fulfill the mandate of the Carnegie Commission in its blueprint for public broadcasting. So CPB and OTP combined to spell out the need to decentralize by placing program control in the hands of local station managers.

Rowland believes "the Corporation was actually engineering a national system which under its tight, direct control, would be much more centralized and politically vulnerable than the then-existing structure." What network centralization had existed could be accounted for by the fiscal constraints imposed by the adminis-

tration. The White House strategy thus forced stations to assign program authority to CPB.[103]

Whitehead's position on how federal dollars should be expended was quite clear. The New York *Times* reported that he "expressed reservations about 'taking the taxpayer's money and using it to express controversial points-of-view which are going to be opposite of the point-of-view of many citizens.' "[104] Ron Ziegler, the President's press secretary, made it appear that the concern was over competition with the networks: "The White House has doubts about whether the Corporation should distribute extensive national public affairs programming in competition with commercial news programming."[105]

Rowland contradicts the White House-OTP thesis that PBS was overly centralized. Both the makeup of the PBS board and the system of program decision making had a strong local flavor. "Under the pressures of extremely limited resources, public broadcasters had cooperated in achieving a national-local balance that was far more responsive . . . than the White House chose to acknowledge. . . . At its core, the localism issue raised by the White House was spurious."[106] It seems quite clear that it suited OTP-CPB interests to structure the controversy in terms of network control over programming.

When CPB's power play reduced PBS to the role of program distributor, the network turned to an ad hoc group of local station board members particularly influential in "financial, cultural, and political" spheres. The group, led by Texas businessman Ralph Rogers, quickly demonstrated "that it had the political clout" to gain CPB's attention. This factor, plus rising White House concern about the revelations associated with Watergate, diverted the energies and priorities of the White House and OTP at the same time that PBS underwent further broadening to include additional station input to its board, thus undercutting the OTP-CPB position on PBS' national-local balance.[107]

As a result, CPB withdrew its attempt to take over the national programming of public television. A partnership agreement was adopted that "clarified the respective CPB and PBS roles and preserved a certain autonomy in station organization," and Whitehead agreed to meet with public broadcasting officials to draft a long-range financing bill. These joint efforts resulted in passage of

legislation authorizing $100 million in 1976 and up to $200 million by 1980.[108]

CPB-PBS relations, however, still suffer from the Whitehead medicine. Rowland notes that

> while CPB permitted PBS to continue the day-to-day work of scheduling, . . . CPB nonetheless reserved for itself what ultimately is the much more important role of long-range program planning. . . . PBS governors were willing to concede to CPB a formal program-planning function if CPB would cease questioning PBS' right to its own programming department and reaffirm the essential role in the national service of public affairs programming.[109]

Rowland points to the serious limitations that the compromise agreement imposed on PBS. First, on programming matters, the negotiations process "can thoroughly sap the vitality, imagination, and daring that otherwise might have become the hallmarks of contemporary public television." More importantly, the agreement legitimizes "CPB's control of program pilot and development funds."[110]

In Rowland's judgment, CPB and PBS were fundamentally at odds on virtually every important issue affecting the public broadcast service. Despite the agreement, CPB has seized and maintains the programming initiative. In effect, the White House assault on public broadcasting achieved most of its ends. The seeds planted early in Whitehead's tenure bore fruit with devastating results.

The OTP was busy on other fronts, including a proposed change in the ways the FCC dealt with broadcast stations on controversial issues by advocating abandonment of the Fairness Doctrine. It proposed an extended license renewal bill to Congress designed to protect broadcasters from challenges by citizens' groups. The latter two proposals, Whitehead told broadcasters, "will add stability to your industry, and avoid the adversary struggle between you and your community groups."[111]

Whitehead's proposal to eliminate the Fairness Doctrine appeared to be the most controversial and least developed. In response to a reporter's question on how the government could be removed from program regulation, the OTP director replied: "There's no way you can get the government out of some oversight of programming. Why? Because that's what broadcasting's all about."[112]

One commentator on regulatory law concluded that while Whitehead's "license renewal proposals would certainly eliminate broadcasters' worries as to what federal officials think of their programming, they would also effectively deny those same officials any opportunity to hear what the listening public thinks of the same programming" and warned: "[The OTP's] license renewal proposals would effectively foreclose competition in the interest of 'stability,' or, more likely in many cases, monopoly, in the radio broadcasting industry."[113] As to deregulation, "only the most limited form of deregulation of commercial radio would be tolerated by the Courts and Congress." In effect, the FCC "has no such authority to waive the positive requirements of the Act."[114]

The circumstances surrounding OTP's investigation of network repeat programming appear to contain political overtones. On a visit to California during the 1972 campaign President Nixon was prevailed upon by a Hollywood film industry union to try to do something about unemployment in motion picture production. OTP was instructed to comply.[115] These latter issues have been treated more fully elsewhere.[116]

In April, 1974, the Senate confirmed President Nixon's nomination of John Eger, a former legal assistant to Dean Burch as deputy director of the OTP and he was sworn in by then-Vice President Gerald Ford on July 1. On August 6, 1974, Clay Thomas Whitehead submitted a letter of resignation to President Nixon to be effective September 15th. On August 8, 1974, Richard Nixon resigned from the Presidency. Eger took over immediately as acting director, where he remained for 21 months, largely as a caretaker.

Two nominees received prominent attention. Albert Horley, Director of Telecommunications for HEW, appeared to be headed for the job until an NAB official indicated industry reservations to the White House.[117] Shortly thereafter, President Ford nominated a former FCC commissioner and part owner-manager of several broadcast properties, Robert Wells. Citizens groups protested his nomination and it was withdrawn.[118]

After a lengthy silence, the White House nominated another former FCC commissioner, Thomas James Houser, for the director's job. He was confirmed with relative ease and took charge in July, 1976.

In an attempt to reduce the friction among the major agencies with telecommunications responsibilities (OTP, OT, FCC), the House Subcommittee on Communications held hearings in July, 1975.[119] Testimony revealed that "in terms of the management of OT and OTP there was . . . an adversary relationship" between the two agencies. In December, 1975, an interim report on the hearings was prepared by the subcommittee staff with respect to government management of telecommunications resources. Various alternatives were examined for reshaping the roles of the FCC, OTP and OT, including the abolition of the latter two agencies through merger with others. Also considered were a Department of Telecommunications with a secretary of cabinet rank, broadening Commerce's role in telecommunications management and policymaking, putting OTP into the FCC, or retaining the existing pattern of operations.

After examining these proposals, the committee staff framed its view of the problems:

> 1) The lack of any feeling of permanence among the leadership of the OTP and the OT. . . .
>
> 2) The lack of adequate policy and planning staff at the FCC.
>
> 3) Divided loyalties within the OT in Commerce and uncertainty as to whether the Office is serving the Assistant Secretary of Commerce for Science and Technology or the Director of OTP.
>
> 4) Suspicion among key FCC staffers regarding policy and research stemming from OTP.
>
> 5) Petty squabbling and power plays among key Government agencies having shared responsibility for telecommunications research and policy development.[120]

"Meaningful regulation and policy development" were essential because

> electronic and telecommunications technologies appear to be on a competitive collision course. There is a distinct promise—some would say threat—of the giant in computer technology, IBM, competing with the giant in telephone technology, AT&T, and the giant in postal communications, the U. S. Post Office. All have a stake in the future of telecommunications along with Comsat and the other communications satellite manufacturers, the broadcasters and the cable operators, among others.[121]

The staff document closed with eight recommendations, including that permanent directors be named to the OTP and the OT, that the FCC upgrade its research capability, that the competing parties

patch up their differences and that Congress take a more active interest in telecommunications development and exercise increased vigilance over the three agencies.[122] None of the recommendations suggested a realignment of agency responsibilities.

One of Houser's first jobs was to deal with a potential insurrection. In late 1975, the Department of Commerce released a draft report prepared by a Science and Technology Task Force.[123] According to *Broadcasting*, "the draft, outlining as it does an agressive role for OT, raises the possibility of a conflict between it and the OTP, which it serves as a research and analysis source."[124]

At his first news conference after confirmation, Houser let it be known that he would not countenance OT's move to pre-empt what he perceived as OTP's basic mission. He told reporters that the agency must be "an efficient, credible player in the formulation and implementation of telecommunications policy."[125]

Further evidence of the Ford administration's concern over what to do with OTP came with the release of a private study in August, 1976. The report's conclusion suggested that "a significant reshaping" of OTP's mission is required "if the executive branch's effectiveness in telecommunications matters is to be improved."[126]

### *OTP and Its Aftermath*

Most assessments of OTP's performance emphasize the agency's role as a political arm of the White House, rather than accounting for the OTP's role as manager and planner for the government's telecommunications investments. However, the emphasis Whitehead placed on private sector telecommunications policy suggested something less than a total commitment to strengthen and improve the Federal government's own telecommunications organization. Despite almost five decades of studies, reports and recommendations by commissions, committees and task forces, the evidence is clear that Whitehead steered the OTP away from those concerns.[127] The agency's involvement in CATV, public and commercial broadcasting issues indicates that it shifted priorities under Whitehead's leadership away from the monumental problems in its own back yard.

There is evidence that the OTP preferred the private sector because of its lack of success in dealing with such well-entrenched heavyweights as the Departments of Defense, State, Justice and the General Services Administration (GSA). For example, Defense, the government's largest single telephonic facilities user, objected when the OTP suggested that comments on rates be cleared first with it before petitioning the FCC. The GSA doubted "whether OTP should have control over executive-branch comments to the FCC on communication issues." A Whitehead assistant noted: "There are jealousies—tremendous jealousies."[128] An FCC official is quoted as saying Whitehead "doesn't show political savvy."[129]

When the Watergate story began to unfold, the OTP's clout quickly evaporated and the agency had to fight for survival. When debate began on whether it should be dismantled, the OTP had become politicized and a dispassionate consideration of its fate was difficult. Almost five years had been devoted to pursuits other than the basic mission.

Whitehead has remarked that he saw the role of the OTP as defining broad policy to encourage structural changes in the nation's system of telecommunications in order to cope with rapidly advancing technologies and changing economic conditions,[130] an admirable goal unfortunately perverted politically.

What then can we learn from this record with respect to the organizational arrangements necessary for harnessing the nation's telecommunications resources? The disarray that has accompanied government telecommunications management and policymaking is largely attributable to the accelerated growth of telecommunications technology, partly to the organizational structure of the agencies charged with coordinating telecommunications functions, and partly to the political atmosphere that has pervaded telecommunications decisionmaking.

The executive order establishing the OTP set out a reasonable mandate, though broader than previous authority vested in executive branch telecommunications management. The problem lay in the interpretation and implementation of this authority. There is little dispute as to the necessity of having a strong executive branch capability in this field. What hasn't been satisfactorily resolved is where in the executive branch such a capability should be housed, staffed and budgeted.

Several problems immediately beset the architects of a suitable home for telecommunications management. There has been substantial change in the leadership (and thinking) of key policymakers, from President Carter and his revamped executive branch telecommunications operations in the White House and the Department of Commerce to new chairmen of the Senate and House communications subcommittees and two newly appointed FCC commissioners, one the chairman.

In broadcast, key issues face policymakers, some of which include further tuning of the rules governing CATV, crossowned media, pay TV, the structure of public broadcasting spectrum management, regulatory reform, and revision of the Federal Communications Act of 1934. Further, the inexorable march of technology has made dramatic changes in the structure of the telecommunications industries. These arise primarily from the convergence of communications and computers and touch on virtually every aspect of information dissemination. "The basic premise that communications functions and computational functions are separable have been [*sic*] rendered meaningless by a basic and pervasive change in technology."[131]

Marc U. Porat describes the arrival of the information economy through the amalgam of computers and telecommunications as the main engines of the post-industrial revolution. He urges increased attention be given to the impact of "information technology (horizontally) *across all other sectors of the economy*. . . . Decisions that are made (vertically) *within* the communication policy and business worlds can affect many external constituencies."[132] Margeson sees the "convergence of technologies" as creating difficulties for the FCC in "defining the boundaries of its regulation. Each time a new service is offered the FCC must decide whether it is data processing or communications. If the latter, it is regulated and offered under tariff. If the former, it is unregulated."[133]

When Congress determined that the public interest is best served by waiving market rivalry for common carriers, a monopoly was conferred. Today, new market entrants offer both hardware and information processing to challenge the very basis of that monopoly. "This . . . new species of marketplace rivalry . . . is clearly unsettling to firms in a regulated environment. . . . Technology challenges the very rationale of public regulation itself."[134]

Several key questions arise from these developments. Margeson asks:

**What mixture of competition and monopoly is in the national interest? How will established common carriers be allowed to participate in competitive markets? What is the boundary between regulated monopoly markets and other markets and under what conditions will regulated monopolies be allowed to cross that border?[135]**

Rapid technological change is not restricted to the common carrier sector. Pool notes a "convergence of modes." "Vendors of drama for pay are experimenting with CATV, cassettes, videodiscs, and over-the-air pay TV—all of which are feasible alternatives" to motion picture theaters.

**The next major policy-relevant change taking place in communications technology will be the growth of channels with adequate bandwidth to carry copious information to and from an audience. A number of technologies now make it feasable to receive and deliver individually addressed pictures, text, or voice over the same basic delivery system. . . . Both CATV and glass optical fibers . . . can provide such channels.[136]**

To deal with the burgeoning technology and improve on the OTP structure created by former President Nixon, a range of proposals has been offered.[137] However, the President's Reorganization Plan[138] abolishing the OTP after receiving de facto Congressional approval, took effect on October 19, 1977. The plan primarily diffuses telecommunications management functions in the Department of Commerce and the Office of Management and Budget, while retaining a small policy options staff in the White House. Henry Geller, former FCC general counsel, is scheduled to take over as the new Assistant Secretary for Telecommunications in January, 1978.

William Capron believes creation of a single powerful entity to oversee such diverse telecommunications activity, including giant companies in telephony, computers, mail, broadcasting, and satellites would fail, that a "multiplicy of organizations is welcome."[139] There is virtually unanimous agreement that those agencies charged with making communications management decisions and developing long range policy must be strengthened, in the White House, at the Department of Commerce, and at the FCC, and a sharper delineation of the role and scope of these agencies is essential.[140] Whatever agency is charged with inter-

agency coordination of long range policy development, it must have both accountability and visibility.

The success of any organization whose position touches on so many aspects of the nation's economy is closely tied to the actions of Congress. Congressional communications subcommittees must articulate their positions on the major policy issues clearly and fix the boundaries of regulation.

How communications policy is perceived and resolved will touch every American. The degree of immersion in the information economy increases daily. Its effects are observable in

> how we produce, what we produce, how we transact business, how we pay, how we shop, how news is gathered and spread, where we work, what kind of work we do, and how we communicate. [The] information explosion . . . is not restricted to the computer or the communications industry. At the very least, it embraces banking, insurance, transportation, health, education communications, entertaining, and manufacturing. . . . The stakes, markets, and investments are incalculable.[141]

## NOTES

1. Executive Order 11556, 3 CFR 956 (1970).

2. Weekly compilation of Presidential Documents 13:1009-1016 (July 18, 1977).

3. "According to 1973 estimates, over $90 billion has been invested in the United States for spectrum-dependent equipment in current use. Of that amount, about 55 percent represents the investiment by the Federal Government. . . . According to a recent estimate, U. S. industry receives annually more than $32 billion from the sale, maintenance, or operation of spectrum-dependent equipment. . . . In the past 20 years, annual radio equipment sales have grown 500 percent and radio licenses have increased 1,000 percent. Communications has also outpaced all other industries in its percentage increase to our gross national product. Its contribution has grown about 530 percent compared with an all industry average of 325 percent." General Accounting Office, "Information on Management and Use of the Radio Frequency Spectrum—A Little-Understood Resource," Report to the Federal Communications Commission and the Office of Telecommunications Policy, Sept. 13, 1974, pp. 1-2.

4. Several historical treatments trace these developments. The Office of Civil and Defense Mobilization (OCDM) published a "Chronological Resume of Significant Incidents in Efforts by the Federal Government to Improve U. S. Telecommunications Management from 1866," OCDM Tele No. 7, May 21, 1959, reprinted in *Spectrum Allocation, Hearings*, Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee, 86th Cong., 1st Sess., June 8-9, 1959, pp. 130-44, hereinafter *1959 Hearings on Spectrum Allocations*. See also *Satellite Communications* (Military-Civil Roles and Relationships), Military Operations Subcommittee of the House Committee on Government Operations, 89th Cong., 2d Sess., Oct. 1964, pp. 75-87, hereinafter *Satellite Communications*; Stanley D. Metzger and Bernie R. Burrus, "Radio Frequency Allocation in the Public Interest: Federal government and Civilian Use," *Duquesne University Law Review*, 4:1-96 (Winter 1965-66); Victor G. Rosenblum, "Low Visibility Decision-Making by Administrative Agencies: The Problem of Radio Spectrum Allocation," *Administrative Law Review*, 18:19-54 (Fall 1965), and Glen O. Robinson, "Radio Spectrum Regulation: The Administrative Process and the Problems of Institutional Reform," *Minnesota Law Review*, 53:1179-1268 (June 1969).

5. The radio spectrum is a three-dimensional (frequency bandwidth, time and space) natural resource with the capability of communicating information by electro-magnetic energy in the form of light waves. Radio waves have frequencies from 10 kiloHertz (KHz—10,000 cycles per second) to 300,000 GigaHertz (GHz—300,000,000 cycles per second). The usable spectrum does not now extend beyond 40 GHz. For a non-technical discussion see William K. Jones, "Use and Regulation of the Radio Spectrum: Report on a Conference," *Washington University Law Quarterly*, 71:71-115 (Winter 1968).

6. Including discovery of the "skip-distance" phenomenon or reflective characteristic of the Kennelly-Heaviside layer of the ionosphere. Exploration of the higher frequencies let the Navy communicate at greater distances from ship to shore. Private industry capitalized on these and other Navy explorations. See Linwood S. Howeth, *History of Communications–Electronics in the U. S. Navy* (Washington, D. C.: GPO, 1963), pp. 330-31, 386-7.

7. 36 Stat. 629 (1910). The first federal regulation of interstate electrical communication was the Post Roads Act of 1866.

8. 37 Stat. 302 (1912).

9. 35 Ops. A. G. 126 (1926).

10. Office of Telecommunications Policy, *The Radio Spectrum: United States Use and Management* (Washington, D. C.: GPO, 1973), p. C-7. For a discussion of IRAC, see R. H. Coase, "Interdepartment Radio Advisory Committee," *Journal of Law and Economics*, 5:17-47 (October 1962).

11. 44 Stat. 1162 (1927).

12. 48 Stat. 1064 (1934), as amended, 47 U. S. C. Par. 1 (1970).

13. Sec. 301 of the Communications Act of 1934 provides for the licensing of all private users of the radio spectrum by the FCC; Sec. 303 (c) assigns frequencies to the various classes of stations; Sec. 305 (a) notes that "radio stations belonging to and operated by the United States shall not be subject to the provisions of sections 301 and 303 of this Act." Sec. 606 notes that the President "may suspend or amend . . . the rules and regulations applicable to any or all stations . . . within the jurisdiction of the United States" during war or national emergency.

14. *1959 Hearings on Spectrum Allocation*, 130.

15. *Ibid.*, p. 131.

16. For example, the Navy's development of radar; the pioneering of microwave frequencies; more sophisticated transmission, detection and reception equipment; improvement of television technology, soon followed by communication satellites. Private sector needs quickly expanded because of land mobile and special radio services. Government requirements included expanded safety services, such as police and fire protection.

17. Authorized by House Resolution 21, 78th Cong., 2d Sess. (Craven Committee).

18. *1959 Hearings on Spectrum Allocation*, 132.

19. Seidman and Moore, "Allocation of Radio Frequencies to Government Agencies," Bureau of the Budget Project 46040, cited in *1959 Hearings on Spectrum Allocation*, 132.

20. *Ibid.*

21. Metzger and Burrus, *op. cit.*, p. 19.

22. 3 CFR 302 (1950).

23. The President's Communications Policy Board, *Telecommunications: A Program for Progress* (Washington, D. C.: 1951), p. 1, hereinafter *PCPB*.

24. 3 CFR 828 (1951).

25. *1959 Hearings on Spectrum Allocation*, 136.

26. 3 CFR 947 (1953), and *ibid.*

27. *1959 Hearings, loc. cit.* See Donald MacQuivey, "Frequency Assignment Administrative Control," unpublished Ph. D. dissertation, American University, 1956.

28. *1959 Hearings on Spectrum Allocation*, 137-41.

29. 3 CFR 416 (1958).

30. *1959 Hearings on Spectrum Allocation*, 142.

31. Edward Wenk, Jr., "Radio Frequency Control in Space Telecommunications," Senate Committee on Aeronautical and Space Sciences, 86th Cong., 2d Sess., March 19, 1960, p. 25.

32. See his "Report on Regulatory Agencies to the President-Elect," Senate Judiciary Committee, 86th Cong., 2d Sess., 1960, pp. 26-28.

33. 3 CFR 535 (1962). Executive Order 10460 was revoked.

34. 76 Stat. 419 (1962). 47 U. S. C. 701-44.

35. *Satellite Communications*, 81.

36. *Hearings before Senate Committee on Appropriations, Independent Offices, Department of Housing and Urban Development*, 91st Cong., 2d Sess., 1971, p. 396.

37. *Satellite Communication*, 352.

38. National Security Action Memorandum 252, July 11, 1963.

39. 3 CFR 858 (1963). The directive authorized the DTM to assume responsibility for the development and operation of NCS and to serve as the special assistant to the President for Telecommunications (SAPT). Since there was no DTM, Defense Secretary Robert McNamara represented the Federal Government in negotiations with the Communications Satellite Corporation (Comsat) and interested foreign states with respect to satellite facilities. That meant that Army and Navy communications components, the National Aeronautics and Space Administration (NASA) and the State Department, all elements of NCS, were excluded from the negotiations. *Satellite Communications*, 83-5.

40. "Of the 30 million channel miles of communications circuitry found in NCS, . . . 24 million channel miles is owned or leased by the DOD." The government's annual leasing and operating costs, other than personnel, were estimated at $1 billion. *Ibid.*, 82-3.

41. GAO, "Review of Status of Development Toward Establishment of a Unified National Communications System," July 14, 1969, p. 34.

42. *Ibid.*, 28.

43. Irwin Stewart, "Telecommunications Management: The Strategy of Organizational Location," *Public Administration Review*, 23:153 (September 1963).

44. *Satellite Communications*, 85.

45. *Ibid.*, 86-7.

46. Senate Commerce Committee, S. Rept. 837, 88th Cong., 2d Sess., October 1964.

47. *Government Use of Satellite Communications*, Military Operations Subcommittee of the House Committee on Government Operations, 89th Cong., 1st Sess., March 17, 1965, p. 9.

48. Telecommunications Science Panel, "Electromagnetic Spectrum Utilization–The Silent Crisis," (Washington, D. C.: GPO, 1966), pp. 41-2.

49. *Government Use of Satellite Communications*–1967, Military Operations Subcommittee of the House Committee on Government Operations, 90th Cong., 1st Sess., Aug. 28, 1967, p. 13.

50. "Global Communications System," Presidential Message to the Congress, 90th Cong., 1st Sess., Aug. 14, 1967, pp. 8-9.

51. *Final Report–President's Task Force on Communications Policy* (Washington, D. C.: GPO, 1968).

52. *Ibid.*, Ch. 8, p. 65.

53. Ch. 1, pp. 23-4.

54. 9, p. 28.

55. 8, pp. 54-5.

56. "Appraisal of Land-Mobile Needs," *Broadcasting*, April 7, 1969, p. 49.

57. Metzger and Burrus, Rosenblum, and Robinson, *supra*, Note 4.

58. Robinson occupied the seat vacated by Dean Burch which expired in June, 1976.

59. Robinson, *supra*, Note 4, pp. 1227-8. "The 'White House' more properly defines the repository of authority, since the President is not commonly involved in the decisions."

60. *Ibid.*, p. 268.

61. Bruce E. Thorp, "Agency Report/Office of Telecommunications Policy speaks for President–and hears some static," *National Journal*, Feb. 13, 1971, p. 342.

62. *President Nixon and the Press* (New York: Funk and Wagnalls, 1972), p. 39.

63. *Ibid.*

64. *Ibid.*, p. 60. Also see Jules Witcover, "The Two Hats of Herb Klein," *Columbia Journalism Review* (Spring 1970), p. 29. The author notes that the administration's attitude is that the "eastern press . . . speaks only for itself and reflects an unrepresentative perspective."

65. "Executive Branch Organization for Telecommunications," reprinted in *Reorganization Plan No. 1 of 1970* (Office of Telecommunications Policy), *Hearings*, Subcommittee of the House Committee on Government Operations, 91st Cong., 2d Sess., March 9-10, 1970, pp. 74-8, hereinafter, *Reorganization Plan.*

66. *Ibid.*, 76.

67. P. 74.

68. Pp. 76-7.

69. P. 78.

70. 22 FCC 2d 127. FCC Chairman Burch commented that "this matter warrants and will receive the highest priority." See Katherine Johnson, "Satcom Policy Spurs Immediate Response," *Aviation Week*, Feb. 9, 1970, p. 67.

71. "White House Acts on a Domestic Bird," *Broadcasting*, Aug. 18, 1969, p. 65.

72. "In the Matter of Establishing of Domestic Communication-Satellite Facilities by Nongovernmental Entities," Docket 16495, 22 FCC 2d 86.

73. Concurring opinion, Nicholas Johnson, 35 FCC 2d 864.

74. Oct. 18, 1971.

75. *Ibid.*, p. 3.

76. 35 FCC 2d 844.

77. 22 FCC 2d 126.

78. 35 FCC 2d 864.

79. *Reorganization Plan*, 5, 3-4.

80. P. 4.

81. In a press conference one day after his confirmation, Whitehead was reported as saying that the only check on the OTP's range of activities "will be self-imposed. The agency's charter . . . is so broad that it could generate work that more than 1,000 could handle." "A Hot New Breath Down FCC's Neck," *Broadcasting*, Sept. 28, 1970, p. 23.

82. In "Presidential Assault on Telecommunications," *Federal Communications Bar Journal*, 23:155-81 (1969).

83. Nominations—1970, *Hearings*, U. S. Senate Committee on Commerce, 91st Cong., 2d Sess., pp. 26-29.

84. 3 CFR 956 (1970).

85. "Who's to Control Broadcast Programs?" *Broadcasting*, Dec. 21, 1970, p. 19.

86. "The Whitehead Scenario for CATV," *Broadcasting*, Feb. 22, 1971, pp. 33-4.

87. "At FCC: A Spectacular on Cable TV," *Broadcasting*, Mar. 15, 1971, pp. 50-51.

88. "Cable Weighs Heavy at the OTP," *Broadcasting*, June 21, 1971, p. 9.

89. "Who's to Write That Cable Regulation?" *Broadcasting*, June 21, 1971, p. 19.

90. "The White House: CATV Scene Stealer," *Broadcasting*, June 28, 1971, p. 16.

91. "Center Ring," *Broadcasting*, July 26, 1971, p. 7. Also see "Administration Again Steps in on Cable," *Broadcasting*, July 26, 1971, p. 8.

92. "Cable Policy: Who's in Charge Here?" Aug. 2, 1971, p. 23.

93. 36 FCC 2d 143.

94. "Do We Really Need More 'Communication'?" *Public Telecommunications Review*, June 1974, p. 17.

95. Marvin Barrett, ed., *Moments of Truth* (New York: Thomas Y. Crowell, 1975), p. 113. Also see Harvey Jessem, "The Selling of the Cable TV Compromise," *Journal of Broadcasting*, 17:427-36 (Fall 1973).

96. 36 FCC 2d 307 (1972).

97. P. 316.

98. "Whitehead Called An Empire Builder," Dec. 27, 1971, pp. 27-8.

99. Address before the National Association of Educational Broadcasters, Miami Beach, Fla., Oct. 20, 1971, p. 1.

100. Presidential aide Patrick Buchanan described various PBS programs and personalities as "definitely not pro-Administration." He was later quoted as telling a public TV official that "if you don't do the right kind of programming we want, you won't get a fucking dime." Barrett, *Supra*, 128-9.

101. The following discussion leans heavily on Willard D. Rowland, Jr., "Public Involvement: The Anatomy of a Myth," in *The Future of Public Broadcasting*, Douglass Cater and Michael J. Nyman, eds. (New York: Praeger Publishers, 1976), pp. 109-39.

102. *Ibid.*, 120-21.

103. *Loc. cit.*

104. Robert Semple, "Nixon Vetoes Bill to Fund Public TV," July 1, 1972, pp. 1, 8.

105. *Ibid.*

106. Rowland, 122-3.

107. *Ibid.*, p. 125.

108. *Ibid.*, pp. 125-7. Also see "CPB's Hopes for Long-Term Funding Cut from Five to Three Years by House Sword," *Broadcasting*, July 21, 1975, pp. 31-2.

109. Pp. 130-1.

110. *Loc. Cit.*

111. Address before the International Television and Radio Society, New York City, October 6, 1971, p. 8.

112. "Whitehead's Reach for Consensus," *Broadcasting*, October 18, 1971, p. 17.

113. Leslie Cheek III, "An Analysis of Proposals to Deregulate Commercial Radio Broadcasting," *Federal Communications Bar Journal* 25:32-3 (1972).

114. Cheek, 20. OTP published a brief overview of its findings on deregulation. See Bruce M. Owen, "The Regulation of Commercial Radio Stations" (Washington, D. C.: OTP, December 1971).

115. "Analysis of the Causes and Effects of Increases in Same-Year Rerun Programming and Related Issues in Prime-Time Network television" (Washington, D. C.: OTP, March 1973).

116. See Robert Sperry, "A Selected Bibliography of Works on the FCC and OTP: 1970-73," *Journal of Broadcasting* 19:55-113 (1975).

117. "HEW's Horley in Line for Top OTP Post," *Broadcasting*, May 26, 1975, pp. 25-6. "Wells Spurts to the Front for OTP Job as Horley is Shot At," *Broadcasting*, June 2, 1975, p. 31.

118. "Sniping at Wells Getting Louder," *Broadcasting*, June 7, 1975, pp. 25-6; also see Nicholas Johnson, "On Being Altogether Comfortable," *Access*, June 30, 1975, p. 2; "Cable, Citizens Groups Question Wells' Nomination as OTP Director," *Access*, Aug. 11, 1975, pp. 4-6.

119. *Telecommunications Research and Policy Development Overview, Hearings,* Subcommittee on Communications of the House Interstate and Foreign Commerce Committee, 94th Cong., 1st Sess., July 8, 9, 10, 1975, p. 107.

120. *Interim Report and Recommended Courses of Action Resulting From the Hearings on Telecommunications Research and Policy Development* (Staff Report), Subcommittee on Communications of the House Interstate and Foreign Commerce Committee, 94th Cong., 1st Sess., December 1975, pp. 14-15.

121. *Ibid.*

122. *Ibid.*, pp. 16-17. To accompany the *Interim Report* (see note 120), the committee staff prepared a *Compendium of Papers Supplementing the Hearings of Telecommunications Research and Policy Development,* House Interstate and Foreign Commerce Committee, 94th Cong., 2d Sess., February 1976.

123. "Technical Draft Study Seeks to Light Some Fires," *Broadcasting,* Dec. 8, 1975, p. 33.

124. *Ibid.*, p. 34.

125. "OTP Seeks Less Friction in its Dealings with Other Agencies and Broadcasters," *Broadcasting,* Aug. 30, 1976, p. 30.

126. "McKinsey Study Urges Reshaping of OTP's Mission," *Broadcasting,* Aug. 2, 1976, pp. 30-31.

127. See Leonard Zeidenberg, "Whitehead: Czar Without A Czardom," *Broadcasting,* Jume 14, 1971, pp. 48-50.

128. See Thorp, *supra,* n. 61, pp. 340-45.

129. Zeidenberg, pp. 48-9.

130. Personal interview, Washington, D. C., July 29, 1974.

131. David Farber and Paul Baran, "The Convergence of Computing and Telecommunications Systems," *Science,* March 18, 1977, pp. 1166-70.

132. *The Information Economy: Definition and Measurement,* Department of Commerce, Office of Telecommunications 77-12 (1) (Washington, D. C.: GPO, 1977) pp. 204-7.

133. *Options Papers,* Communications Subcommittee of the House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess., May 1977, p. 362.

134. Manley R. Irwin and Steven C. Johnson, "The Information Economy and Public Policy," *Science,* March 18, 1977, p. 1172.

135. *Options Papers,* 344-417.

136. Ithiel de Sola Pool, "Policy Choices for the Information Age," in *Refocusing Government Communications Policy* (Washington, D. C.: Aspen Institute, 1976), p. 5.

137. See *Options Papers,* pp. 617-30; cf. Daniel Appleman, "The OTP and Organizational Alternatives," *Public Telecommunications Review,* January/February 1977, pp. 44-51.

138. *Weekly Compilation of Presidential Documents* 13:1009-16 (July 18, 1977).

139. Quoted by M. C. J. Elton in "Government Telecommunications Research and Policy Development," *Refocusing Government Communications Policy*, p. 26.

140. See "An Aspen Initiative on Communications Reorganization," *Broadcasting*, Sept. 12, 1977, pp. 26-31.

141. Irwin and Johnson, *op cit.*, p. 1172.